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In the Supreme Court of the United States

OCTOBER TERM, 1956

ALBERT L. TROP, PETITIONER

v.

JOHN FOSTER DULLES, AS SECRETARY OF STATE OF THE UNITED STATES, AND UNITED STATES DEPARTMENT OF STATE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

J. LEE RANKIN,
Solicitor General,
WARREN OLNEY III,
Assistant Attorney General,
BEATRICE ROSENBERG,
Attorney,
Department of Justice,
Washington 25, D. C.

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In 1944, in Casablanca, French Morocco, petitioner, a native-born citizen, was convicted by court-martial of deserting the United States military forces in time of war, and as a result thereof was dishonorably discharged from the service. In October 1952, his application for a passport was refused on the ground that he had lost his United States nationality under Section 401(g) of the Nationality Act of 1940 which specified as a ground for loss of nationality "deserting the mili-

tary, air, or naval forces of the United States in time of war, if and when he is convicted thereof by court martial and as the result of such conviction is dismissed or dishonorably discharged * * *."

In December 1955, petitioner brought this suit for a declaratory judgment to establish his citizenship. After both parties had moved for summary judgment, the District Court granted judgment in favor of the government (Pet. 15). The Court of Appeals affirmed, Judge Clark dissenting (Pet. 16-19).

In this Court petitioner attacks the constitutionality of Section 401(g). The issue is very similar to the question of the validity of Section 401(j), providing for loss of nationality by remaining out of the country to avoid military service, now before this Court in *Perez* v. *Brownell*, No. 572, this Term. The decision in the *Perez* case will have great bearing, and may indeed be controlling, on the issue here raised. For that reason the government does not oppose the granting of the petition for a writ of certiorari in this case.

Respectfully submitted,

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Solicitor General.

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FEBRUARY 1957.

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